

HUMAN SERVICES DEPARTMENT[441]**Adopted and Filed**

Pursuant to the authority of Iowa Code section 239B.4(6), the Department of Human Services hereby amends Chapter 40, “Application for Aid,” Chapter 41, “Granting Assistance,” and Chapter 46, “Overpayment Recovery,” Iowa Administrative Code.

These amendments update and clarify existing language and ensure that the rules comply with federal requirements, including final regulations (Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. No. 112-96), 45 CFR Parts 262, 264, and 265) issued after the rules were last updated.

Specifically, these amendments add definitions for locations where applicants and recipients are prohibited from accessing Family Investment Program (FIP) funds with an electronic access card. These amendments also require applicants and recipients to agree in writing that they will not use an electronic access card at prohibited locations, and these amendments add to the amount the client must repay any fees associated with accessing FIP funds at a prohibited location.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2684C** on August 17, 2016. The Department received no comments during the public comment period. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on October 12, 2016.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 239B.4(6), Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. No. 112-96) and 45 CFR Parts 262, 264, and 265.

These amendments will become effective January 1, 2017.

The following amendments are adopted.

ITEM 1. Adopt the following new definitions in rule **441—40.21(239B)**:

“*Casino, gambling casino, or gaming establishment*” means an establishment with a primary purpose of accommodating the wagering of money. It does not include:

1. A grocery store which sells groceries including staple foods and which also offers, or is located within the same building or complex as, casino, gambling, or gaming activities; or
2. Any other establishment that offers casino, gambling, or gaming activities incidental to the principal purpose of the business.

An automated teller machine (ATM) or a point-of-sale (POS) terminal located within those areas of an establishment where individuals are banned due to age restrictions associated with gambling, established by state or federal law or by any other regulatory entity having the authority to do so, is considered to be in a casino, gambling casino, or gaming establishment.

“*Electronic benefit transfer transaction*” means the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service.

“*Liquor store*” means any retail establishment which sells exclusively or primarily intoxicating liquor or other alcoholic beverages. Such term does not include a grocery store which sells both intoxicating liquor and groceries including staple foods (within the meaning of Section 3(r) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(r))).

Unless exempt as described in this definition, a retail establishment meets the definition of a liquor store when it has a North American Industry Classification System (NAICS) number that categorizes the retail establishment as either a beer, wine and liquor store or as a drinking place (alcoholic beverages). A retail establishment that does not have either type of NAICS code is considered to exclusively or primarily sell intoxicating liquor when 95 percent or more of the retail establishment’s gross sales are

from intoxicating liquor and it is not a United States Department of Agriculture-certified Supplemental Nutrition Assistance Program (SNAP) retailer.

“Retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment” means an establishment that includes live entertainment at locations such as, but not limited to, strip clubs and gentleman’s clubs. It also includes stores and theaters that exclusively or primarily sell or feature adult-oriented videos and movies such as, but not limited to, adult book stores and adult movie theaters. A retail establishment meets this definition when the department has confirmed the primary nature of the business through the description on the business’s Web site, phone contact with the establishment, a site visit, or other means such as common local knowledge.

ITEM 2. Amend subrule 41.25(11) as follows:

41.25(11) Access to benefits. As a condition of eligibility, applicants and recipients must agree in writing to not use an electronic access card at prohibited locations. By signing Form 470-0462 or 470-0462(S), Financial Support Application, or Form 470-2881, 470-2881(S), 470-2881(M), or 470-2881(MS), Review/Recertification Eligibility Document, the applicant, the applicant’s authorized representative or, when the applicant is incompetent or incapacitated, someone acting responsibly on the applicant’s behalf agrees to this condition of eligibility. When both parents, or a parent and a stepparent, are in the home and eligibility is determined on a family or household basis, one parent or stepparent may sign the application and agree to this condition for the assistance unit. Failure to sign a form agreeing to not use the electronic access card at prohibited locations creates ineligibility for the entire eligible group.

a. A recipient shall not use the recipient’s electronic access card issued pursuant to 441—subrule 45.21(1) to access benefits at any of the following prohibited locations as defined by federal statute or regulation applicable to this prohibition and as further defined in rule 441—40.21(239B):

- (1) A liquor store,
- (2) A casino, gambling casino, or gaming establishment, or
- (3) A retail establishment ~~that~~ which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.

b. No change.

c. When the department of inspections and appeals finds that a recipient has used the recipient’s electronic access card at a prohibited location, the household that includes the recipient is:

- (1) No change.
- (2) Liable for any amounts accessed and any associated fees for accessing the benefits at a prohibited location and required to repay such amount in accordance with 441—Chapter 46;
- (3) and (4) No change.
- d.* and *e.* No change.

ITEM 3. Amend paragraph **46.24(3)“c”** as follows:

c. An overpayment due to a recipient’s accessing benefits via the electronic access card at a prohibited location shall be the total of the transactions and any associated fees for accessing the benefits at the prohibited locations location pursuant to 441—subrule 41.25(11).

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/9/16.